

To: Kirchner, Karen[kirchner.karen@epa.gov]; Quadri, Syed[quadri.syed@epa.gov]
From: Krueger, Thomas
Sent: Mon 4/20/2015 12:49:44 PM
Subject: FW: Response to Lusher Site letter
[removed.txt](#)

From: Vogel, Arthur A. (MKE x1545) [mailto:arthur.vogel@quarles.com]
Sent: Friday, April 17, 2015 1:58 PM
To: Krueger, Thomas; SThill@idem.IN.gov
Cc: Ashleigh.Morris@usdoj.gov; Deveau, Frank; Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Jeff Claflin; Don Kiesling; kgaskill@mlc-usa.com
Subject: RE: Response to Lusher Site letter

Tom/Steve:

Those parties listed on Exhibit A to the April 2 letter from the office of Susan Franzetti look forward to our call on Monday morning, April 20, at 9:00/8:00 a.m. EST/CST.

In advance of that call, we thought it might be helpful to convey comments on the items set forth in your email of April 8.

1. The parties believe that they have the financial ability to perform work necessary to implement the interim remedy, assuming agreement is reached on a final Consent Decree and Statement of Work and even though insurance issues may not be resolved by the time a final CD needs to be executed. That said, please be aware that insurance issues remain important to the PRPs and could play a role in the final decision by any given PRP to sign a final Consent Decree.

2. The parties understand that any final Consent Decree will require the payment of agency oversight costs incurred in a manner not inconsistent with the NCP. We appreciate EPA's willingness to defer its claim for past costs until a later date.

3. The parties understand that there is fairly limited latitude in negotiating the terms of the model Consent Decree. We simply believe that the proposed Consent Decree can best be addressed in the face-to-face meeting proposed in our letter of April 2. (We will endeavor, of course, to get your comments before such a meeting in order to make the meeting as productive as possible.)

4. The parties likewise believe that the proposed Statement of Work can best be addressed in the face-to-face meeting proposed in our letter of April 2. Frankly, some additional time is required for the PRPs to complete review of the SOW with qualified technical consultants.

We appreciate EPA's willingness to issue additional notice letters and to consider other appropriate mechanisms to encourage participation by others. The parties are evaluating options for getting you additional information in this regard in an organized and helpful fashion. We may not have much to discuss on this topic yet during our call on April 20.

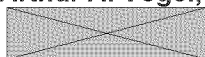
We understand the need to be forward-looking at this point, so that further consideration and refinement of locations subject to vapor intrusion barriers and municipal water hookups may best be covered in our discussions regarding the SOW and thereafter during work that may be associated with remedial design.

As set forth in the Good Faith Offer letter of April 2, the contents of this memo are expressly subject to and conditioned upon the following: (a) each party expressly reserves all rights and defenses – factual, legal or otherwise – that may apply now or hereafter, resulting in a full reservation of rights and defenses, (b) a formal commitment to perform and/or finance the interim remedy is subject to the negotiation of an agreement satisfactory to EPA and each party after review by respective party management, and (c) each party reserves the right to participate in a final agreement – or not to participate – depending upon the terms of such agreement, an adequate number of participating parties at the time of formal commitment, and any other considerations deemed relevant by each party. Our continuing discussions with EPA are not – and should not be construed as – an admission of liability for the Site by any party. Each party specifically denies any liability with respect to the Lusher Street Site.

We hope these comments facilitate our discussion on April 20.

Tony

Arthur A. Vogel, Jr.



Partner

Quarles & Brady LLP

411 East Wisconsin Avenue
Suite 2350
Milwaukee, Wisconsin 53202-4426

Direct Dial: (414) 277-5545
Direct Fax: (414) 978-8960
E-mail: arthur.vogel@quarles.com



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-----Original Message-----

From: Krueger, Thomas [<mailto:krueger.thomas@epa.gov>]

Sent: Monday, April 13, 2015 10:31 AM

To: Deveau, Frank; Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Jeff Claflin; Vogel, Arthur A. (MKE x1545); Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov; Kirchner, Karen

Subject: RE: Response to Lusher Site letter

I have set up the following call-in number for Monday, April 20 at 8:00 am CDT/9:00 am EDT:

Call-in number: (866) 299-3188

Conference code: 3128866610

-----Original Message-----

From: Krueger, Thomas

Sent: Friday, April 10, 2015 12:48 PM

To: Deveau, Frank; Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov; Kirchner, Karen

Subject: Re: Response to Lusher Site letter

The 20th could work for EPA, IDEM and DOJ if we can begin early. Would 8:00 CDT/9:00 EDT be possible?

From: Deveau, Frank <FDeveau@taftlaw.com>

Sent: Friday, April 10, 2015 10:56 AM

To: Krueger, Thomas; Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

Tom...sorry I meant Friday the 17th which I see is not good for Dan Cory. So how about, Monday the 20th?

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-----Original Message-----

From: Deveau, Frank

Sent: Friday, April 10, 2015 11:52 AM

To: 'Krueger, Thomas'; Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling;

kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

How about Friday the 18th?

Taft /

Frank J. Deveau / Partner

Taft Stettinius & Hollister LLP

One Indiana Square, Suite 3500

Indianapolis, Indiana 46204-2023

Tel: 317.713.3500 * Fax: 317.713.3699

Direct: 317.713.3520

www.taftlaw.com fdeveau@taftlaw.com / https://urldefense.proofpoint.com/v2/url?u=http-3A__www.linkedin.com_company_41333-3Ftrk-3Dtyah&d=BQIFAg&c=S1aAumtajvpvqaAE_i9SmA&r=DCPgwehjFSVKWVU_WXCHnmLE47_-Uv0_1BGNO_jnJWs&m=4Srphol691qWJ7rEObxrb7Sn4wt8SM_P3R2-1pPpBIQ&s=5KZpcWuOk8EaNuN7bVwM506-1jeX5g9auV7IUKVZVk0&e=

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-----Original Message-----

From: Krueger, Thomas [<mailto:krueger.thomas@epa.gov>]

Sent: Friday, April 10, 2015 11:50 AM

To: Dan Cory; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Deveau, Frank; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: Re: Response to Lusher Site letter

Those dates are both bad for the government parties.

From: Dan Cory <dcory@psrb.com>

Sent: Friday, April 10, 2015 10:47 AM

To: Krueger, Thomas; Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

Tom,

We've been attempting to coordinate on our end before getting back to you. I am not available on April 14, but am available April 15 or 17, and I know those dates work for at least most of the

other members of the group. Please advise if there are times April 15 or 17 that will work on your end?

Regards,

Dan

Dan Cory

Plews Shadley Racher & Braun LLP

53732 Generations Drive

South Bend, Indiana 46635

Tel. No. (574) 273-1010

Fax No. (574) 271-2050

E-mail: dcory@psrb.com

Website: www.psr.com

-----Original Message-----

From: Krueger, Thomas [<mailto:krueger.thomas@epa.gov>]

Sent: Friday, April 10, 2015 11:45 AM

To: Vince Angermeier; Susan Franzetti; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

I have not heard back from anyone other than Mr. Angermeier and from Mr. Studer's office about time conflicts. I therefore propose that we plan to have the call at 9:30 CDT/10:30 EDT on Tuesday, April 14. Please advise immediately if that time will not work for you. Otherwise, I look forward to talking with you all then.

Tom Krueger

From: Vince Angermeier [va@nijmanfranzetti.com]

Sent: Wednesday, April 8, 2015 10:26 AM

To: Susan Franzetti; Krueger, Thomas; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

I'm available to participate in the conference call on April 14th, but have a conflict from 12-2pm CST.

Best regards

Vince Angermeier

Nijman Franzetti LLP

From: Susan Franzetti

Sent: Wednesday, April 08, 2015 10:05 AM

To: Krueger, Thomas; Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-

usa.com; Vince Angermeier

Cc: Ashleigh.Morris@usdoj.gov; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov; PKASARAB@idem.IN.gov

Subject: RE: Response to Lusher Site letter

Dear Mr. Krueger: Thank you for your response. Because I will be leaving the country on vacation starting April 10, I've copied my associate Vince Angermeier on this e-mail so that everyone can include him on future communications as he will be participating in my stead on any call scheduled next week to discuss the Good Faith Offer Letter further.

Regards, Susan

Susan M. Franzetti

sf@nijmanfranzetti.com<<mailto:sf@nijmanfranzetti.com>>

(312) 251-5590

From: Krueger, Thomas [<mailto:krueger.thomas@epa.gov>]

Sent: Wednesday, April 08, 2015 9:19 AM

To: Jeff Featherstun; Stephen Studer; Jim Woodsmall; Frank Deveau; Dan Cory; Jeff Claflin; Arthur A. Vogel - Quarles & Brady LLP; Don Kiesling; kgaskill@mlc-usa.com<<mailto:kgaskill@mlc-usa.com>>; Susan Franzetti

Cc: Ashleigh.Morris@usdoj.gov<<mailto:Ashleigh.Morris@usdoj.gov>>; Quadri, Syed; Zaharoff, Josh; SThill@idem.IN.gov<<mailto:SThill@idem.IN.gov>>; PKASARAB@idem.IN.gov<<mailto:PKASARAB@idem.IN.gov>>

Subject: Response to Lusher Site letter

Dear Ms. Franzetti,

Thank you for your April 2, 2015 letter on behalf of a group of parties that received EPA's February 2, 2015 special notice letter.

EPA and IDEM are encouraged by the group's ability to organize and respond to the special notice letter. We agree with the group's suggestion that EPA, IDEM and the group should meet promptly to identify and resolve the outstanding issues. We suggest a conference call as a first step and propose April 14 as a date where all of the EPA, IDEM and DOJ case team would be available. Please let us know if group representatives could be available for a 2-hour window sometime that day.

EPA and IDEM would like to confirm and/or clarify a few points to verify that they can consider this a good faith offer and begin working with the group to clarify the issues and wrap up the details.

1) Willingness to implement/finance the work - The letter states that the parties need additional time before they can make a representation regarding their financial ability to perform the work. EPA recognizes that some of the parties are smaller entities. However the work at issue here, assuming (for convenience) that it is funded equally by all eight parties, would cost the parties less than \$400,000 each. EPA does not have any reason to believe that the parties cannot pay that amount as the cleanup costs are incurred over the course of the next 12 months or more. To the extent the parties obtain insurance coverage in that timeframe, it would further lessen the financial impact. EPA therefore requests a stronger statement of the parties' financial capability to perform the work if an agreement can be reached. If the parties are truly unable to fund or perform the work in the absence of insurance coverage, it may not make sense to continue further at this point.

2) Statement of willingness to pay oversight costs - The letter states the group's belief that a commitment to pay oversight costs would impose an undue burden on them because other PRPs may exist and may not be part of the settlement. EPA and IDEM oversight is a necessary element of the work covered by this agreement, and must be part of any commitment from the group. CERCLA imposes strict, joint and several liability on parties who may have contributed contamination now co-mingled in the groundwater plume. Additional parties may be subjected to contribution actions and/or may be subjected to "catch up" payments at subsequent phases of the project. EPA has indicated its willingness to consider deferring payment of past costs until subsequent phases of the process in recognition of the group's concerns, but a good faith offer must provide for oversight costs associated with the interim remedy.

3) A response to the proposed Consent Decree - The letter mistakenly states that EPA and IDEM have not yet provided the proposed Consent Decree. The proposed Decree was attached to the Feb. 2 special notice letter. Indeed, with the exception of the past cost and oversight cost issues, none of the concerns in the letter identify any potential issues with the provisions typically required by EPA and outlined in the existing draft decree. Especially because the parties are all represented by experienced Superfund practitioners, EPA and IDEM would expect that any concerns about the standard Decree provisions provided to the parties could be quickly identified and addressed. As EPA indicated at the March 17 meeting, it is willing to provide MS Word copies of the decree and SOW to the group to facilitate further discussion.

4) A response to the proposed Statement of Work - EPA and IDEM understand that the group wishes to pursue a variety of issues and concerns regarding the selected interim remedy. EPA and IDEM are eager to do so, and suggest that it may be useful for the group to identify their issues and concerns using annotations to the draft SOW, so that the discussions can also focus on refining and finalizing the settlement documents.

Finally, in response to some of the group's discussion points:

1) EPA is willing to consider issuing additional notice letters and pursuing other appropriate mechanisms to encourage participation by other identified PRPs - either at this stage or at subsequent phases. EPA will act promptly on information provided by the group, but will not postpone negotiation deadlines for the interim remedy solely to let those efforts play out.

2) EPA and IDEM are willing to discuss further consideration and refinement of the remedial area and the vapor intrusion area of concern, and to include appropriate measures in the SOW and/or in the remedial design to be developed pursuant to the SOW. Indeed, EPA and IDEM are eager to pursue those discussions, and are optimistic that they can be quickly resolved. EPA does not, however, agree with the letter's implication that it has not carefully and appropriately established the scope of the groundwater plume and attendant vapor intrusion issues. The fact that further information gathering is needed to fully define and address the source areas that may be feeding that plume is separate from, and does not undermine, the plume delineation itself.

In order to confirm that the letter constitutes a good faith offer, and in order to keep moving forward under the existing negotiation timelines, EPA and IDEM ask that the group be prepared

to respond to the points raised above, on or before the April 14 call.

We look forward to hearing from you.

Tom Krueger, U.S. EPA

Steve Thill, IDEM

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